IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.:	09/939,206	Confirmation No.: 3572
Appellant(s):	Gill	
Filed:	August 24, 2001	
Art Unit:	3629	
Examiner:	PLUCINSKI (formerly WEBB), Jamisue	
Title:	FREIGHT RATE MANAGER	

Docket No.:   018360/291659
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Board of Patent Appeals and Interferences
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REPLY BRIEF UNDER 37 CFR § 41.41

This Reply Brief is filed pursuant to the Examiner's Answer mailed on July 16, 2007. This Reply Brief has been filed within two months of the Examiner's Answer as required by 37 C.F.R. §41.41(a)(1).

1. Correction of Missing Word in Appeal Brief

Applicant notes that in the Appeal Brief, page 2, second paragraph (approximately in the middle of the page), the following sentence should have read: "For example, a rate sheet may have a cell with the text of the carrier indicated (e.g., "UPS") that can be identified and used to identify the associated carrier."

Applicant notes that there does not appear to have been any confusion manifested in the Examiner's Answer based on the missing word. Applicant, however, desires to avoid any confusion by others in reading the Appeal Brief.

2.   Status of Claims

The status of the claims remain as stated in the Appeal Brief, namely Claims 1-45 have been cancelled and claims 46-83 are pending and stand rejected in the Application. A copy of the claims is attached to this Reply Brief as a Claims Appendix.

3.   **Grounds for Rejection to be Reviewed on Appeal**

I. Whether claims 46-54 and 59-81 are nonobvious under 35 U.S.C. 103(a) over the combination of the USPN 5,661,653 ("*Kulik*") and USPN 6,601,667 ("*Danford-Klein*").

II. Whether claims 48, 62, and 74 are nonobvious under 35 U.S.C. 103(a) over the combination of *Kulik*, *Danford-Klein*, and USPN 6,286,009 ("*Mattioli*").

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4.   **Argument**

Applicant first addresses the Examiner's Answer regarding the rejection of claims 46, 51, 60, 66, 72 and 77, namely by showing how certain limitations in the independent claims are not addressed at all in the Examiner's Answer. Then, Applicant provides additional context for understanding the Examiner's arguments in light of past statements associated with the prosecution upto this point in time.

4.1.   **Addressing Section 9 (4) of Examiner's Answer**

Applicant notes that the Examiner's Answer ("Answer") in section 9, par. 4 (page 3) has alleged the following disclosure in *Kulik* anticipates the following elements:

Item disclose in *Kulik*	Corresponding Claim Limitation
rates manager 25	"rate sheet input module",
custom rates processor 31	"rate sheet analyzer module"
custom rates processor 31 and rates manager 25	"rule generation module"

Applicant notes that the Examiner's Answer ("Answer") acknowledges that "*Kulik*, however, fails to disclose the system being used for multiple carriers…." (Answer, page 4, item 5.)

Various embodiments of the present invention handle multiple carriers and this aspect is manifested in **several** claim limitations, such as those found in independent claim 46. One such limitation is "wherein each rate sheet is associated with one of a plurality of freight carriers." The Examiner has indicated in the Answer that

> [i]t would have been obvious to one having ordinary skill in the art at the time of the invention was made to modify *Kulik* to be capable of being used for multiple carriers, and where the rate sheet is specific to the carrier, in order to increase performance of calculating rates for multiple carriers, and to provide choices to customer [sic] for shipping a parcel and determining the least expensive carrier for the parcel. (*Id*.)

Applicant notes that the Examiner's Answer has addressed **one** limitation that involves multiples carriers, namely the limitation "wherein each rate sheet associated with one of a plurality of freight carriers." However, Applicant notes the Answer **has not** addressed the other limitations in claim 46 which pertain to the invention's ability to handle multiple carriers,

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including the following limitation in independent claim 46 (hereafter referred to as the "selecting" limitation):

> the rate sheet analyzer module selecting one of the plurality of templates by matching one of the plurality of freight carriers associated with the rate sheet with the specific freight carrier associated with the one of the plurality of templates.

The Answer does not address how or why the custom rates process would be modified to teach or suggest the above limitation. Because the Answer has not addressed this limitation at all (which can be found in various forms in the independent claims) in rejecting claims 46, 51, 60, 66, 72 and 77, Applicant submits a *prima-facie* case of obviousness has not been made. Consequently, Applicant submits that independent claims 46, 60, 72 are patentable over the cited references. Further, because the remaining claims variously depend from these allowable independent claims, the remaining claims 47-59, 61-71, and 73-83 are also allowable.

4.1.1 The Examiner's Shifting And/Or Ambiguous Arguments Have Unnecessarily Burdened the Prosecution

In regard to the above identified limitation, Applicant submits that there is no disclosure in *Kulik* regarding the custom rates processor 31 (analogized to the rate sheet analyzer module) that selects one of a plurality of templates by "matching one of the plurality of freight carriers associated with the rate sheet with the specific freight carrier associated with the one of the plurality of templates." Indeed, Applicant has alleged that *Kulik* only deals with a single carrier (e.g., the postal service), and the Examiner agrees with this point (see, Examiner's Reply Brief, page 4, item 5.)

The Examiner may have intended to address the "selecting" limitation by the following:

"*Danford-Klein* discloses the use of a rating module (carrier specific service engines, which the examiner considers to be a form of carrier specific templates), which calculates rates for multiple carriers, using carrier rules, and analyzing rate tables (See abstract, Figures 6A, and 8, Columns 2, lines 23-44 and Columns 3, lines 31-42)."

Applicant notes that this nebulous statement has been addressed by the Applicant in prior office actions, and a review of the history is relevant to the determination of obviousness. Applicant submits the above statement provided by the Examiner does not support a *prima-facie* case of obviousness as to the 'selecting' limitation.

4.1.2 Brief Review of Prosecution History

In the Office Action mailed December 1, 2005, the Examiner rejected certain claims based on the combination of *Kulik* and *Danford-Klein*, and stated:

> "*Danford-Klein* discloses the use of a rating module, which calculates rates for multiple carriers, using carrier rules, and analyzing rate tables (See abstract, Figures 6A and 8, Column 2, lines 23-44, and Column 3, lines 31-42)."

The text cited by the Examiner, namely line 33 of *Danford-Klein*, discloses that a "rating engine for a particular carrier contract may be created." Applicant reasonably assumed that the "rating engine" in *Danforth-Klein*, which performs rating, was being equated with the claim limitation of a "rate sheet analyzer module."

In the next Office Action, mailed June 7, 2006, the Examiner expanded the rejection based on *Kulik* and *Danford-Klein* and stated:

> *Danford-Klein* discloses the use of a rating module (carrier specific service engines, which the examiner considers to be a form of carrier specific templates), which calculates rates for multiple carriers, using carrier rules, and analyzing rate tables (See abstract, Figures 6A and 8, Column 2, lines 23-44, and Column 3, lines 31-42)."

Applicant explained why *Danford-Klein* does not disclose the use of a rating module which calculates rates for multiple carriers (see, e.g., Response dated June 23, 2006, page 12). Applicant argued why the Examiner's understanding of the prior art reference could not be a basis for rendering the claims obvious.

The Examiner responded with an Advisory Action, and included the following:

>   With respect to Applicant's argument that *Danford-Klein* does not
> disclose a module used for multiple carriers, it only uses the module for
> one carrier: In Column 2 of *Danford-Klein*, it specifically states that
> Customers may also have multiple contracts with many different carriers.
> And that a customer may desire to have contracts with multiple carriers in
> order to induce greater price competition. *Danford-Klein*, in Column 2,
> also discloses the prices are presented for comparison purposes of
> multiple carriers. Therefore, it is the examiner's position that the service
> engine is in fact capable of rating multiple carriers, not only one carrier.
> Therefore arguments are not considered persuasive and rejection stands
> as stated in the final office action.

Applicant submits that the Examiner's rejection was based on the "examiner's position that the service engine is in fact capable of rating multiple carriers."

The Applicant responded in an Amendment after filing an RCE showing why *Danford-Klein* does not disclose use of a rating module which calculates rates for multiple carriers (see, e.g., Amendment dated August 31, 2006, page 12).   Applicant presumed (which may be incorrect) the Examiner meant to refer to the rating module of *Danforth-Klein*.

In response, the Examiner restated the same sentence in a Nov. 16, 2006 Office Action:

>   *Danford-Klein* discloses the use of a rating module (carrier specific
> service engines, which the examiner considers to be a form of carrier
> specific templates), which calculates rates for multiple carriers, using
> carrier rules, and analyzing rate tables (See abstract, Figures 6A and 8,
> Column 2, lines 23-44, and Column 3, lines 31-42)."

Applicant, in response, filed the Appeal Brief herewith.   Applicant submits that the Appeal Brief clearly shows why *Danford-Klein* does not disclose a rating module rating multiple carriers, but only one carrier.

In the Answer ("Response to Arguments"), the Examiner states that "*Danford-Klein* was used to show the use of multiple carriers being evaluated, not that multiple carriers are evaluated using one rating engine." The Examiner now dismisses all of the Applicant's arguments because "that is not how the reference was being applied."

Applicant submits that the Examiner made it clear in the Advisory Action that the purpose of citing *Danford-Klein* was because "it is the examiner's position that the service

engine [of *Danford-Klein*] is in fact capable of rating multiple carriers." The Advisory Action stated this was the basis of upholding the rejection.

In the present Answer, the Examiner now states:

> The examiner used the word rating module but in parenthesis explained how the reference of *Danford-Klein* equated to the claim limitations "carrier specific service engines, which the examiner considered to be a form of carrier specific templates."

Applicant finds the above statement ambiguous and therefore is unable to provide a meaningful rebuttal. It is unclear what claim limitations are alleged to be equated with what aspects in *Danford-Klein*. The Examiner has "equated to the claim limitations 'carrier specific service engines'", but the claims do not recite the limitation "carrier specific service engines."

Further, the Examiner now states that "*Danford-Klein* was used to show the use of multiple carriers being evaluated, not that multiple carriers are evaluated using one rating engine." Applicant submits that the Examiner has shifted interpretation of the record, as the Advisory Action stated "it is the examiner's position that the service engine [of *Danford-Klein*] is in fact capable of rating multiple carriers."

Applicant has argued in the past that *Danford-Klein* does not disclose a rating engine processing different carriers' rates. Therefore, Applicant has argued the combination of *Danford-Klein* and *Kulik* would not render obvious the claim limitation, including the "selecting" limitation. In *Danford-Klein*, a new rating engine is created to rate a new contract with a carrier, and therefore, because each rating engine involves only one contract or set of rate terms, there is no selecting required.

Applicant is unable to address the ambiguous rejection in the Answer, because it is unclear where/how the recited claim limitations are found in the combination of references. Applicant submits that if *Danford-Klein* is being cited only for the proposition that it disclosed "multiple carriers being evaluated", then the combination of *Danford-Klein* and *Kulik* would not render obvious the "selecting" limitation, let alone the other limitations, which indicates how information from multiple carriers is being analyzed. Merely alleging that *Kulik* could be modified to handle multiple carriers does not indicate how *Kulik* would accomplish this function. Rather, the Examiner is merely stating that the Applicant has misinterpreted the Examiner's less-

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than clear statements and implies that on that basis, the rejection should be sustained. Applicant submits regardless of whether Applicant has misinterpreted the Examiner's rejection, the Examiner's rejection still does not address how the "selecting" claimed limitation is disclosed in the combination of references.

4.2 Addressing Section 9 (7) of Examiner's Answer

Applicant notes that the Examiner's Answer, namely that "*Kulik* discloses the user interfacing with the system to define custom rate information (Column 6, lines 21-29)" refers to text in *Kulik* that pertains to a user inputting "elements defining a custom *template*." (Col. 6, line 23, emphasis added). There is no disclosure of the user "indicating the specific freight carrier associated with *the rate sheet*" as claims 49, 63, and 75 variously recite a user providing input regarding a *rate sheet, not a template*. A "template" is distinct from a "rate sheet." The Examiner has conceded that *Kulick* fails to disclose a system for multiple carriers, so there is no reason why *Kulik* would teach or disclose a user indicating the specific freight carrier. Further, the text cited by the Examiner pertains to a user providing information to a template, not a rate sheet as recited in the claim.

4.3 Addressing Section 9 (8) of Examiner's Answer

The Examiner states "*Kulik* discloses the user can define such thing as class, and weight, in a template for determining the rate (col., 6, lines 20-40, Tables 1-3). The examiner considers this to be a keyword, that signifies the type of data (i.e., class or weight)."

Claim 50 recites in part "where the rate sheet analyzer module selects the template to interpret the rate sheet based on a keyword in the rate sheet." The other claims, claims 52, 65, 67, 76, and 78 various recite selecting or retrieving the template based on a keyword.

It appears that the Examiner considers the act of the user defining the class and weight in a template as rendering obvious the limitation "the rate sheet analyzer module selects the template...based on a keyword." Applicant notes that the user defining the class and weight in a template in *Kulik* refers to the user inputting data to *create* a template. It is unclear how this disclosure pertains to the rate sheet analyzer module *selecting* the template.

The claims pertain to selecting a template, not selecting a particular weight or class for creating a template.

4.4 Addressing Section 9 (9) of Examiner's Answer

Regarding claims 54, 69, 80 and 81, the Examiner's Answer merely states "See reference numbers 21 and 23." Applicant notes the Examiner's Answer has elaborated in Section 10 on claims 54 and 80 by stating "The claims do not disclose a distributed system but merely claim a remote location, however never stated removed from what."

Applicant notes that claim 54, which depends on claim 53, recites "the template storage module is in a remote location *with respect to the rate sheet analyzer module*." Thus, "the remote location" recited in claim 54 is defined in claim 53, and does state a location from what it is removed.

As for claim 80, which is a computer-readable medium type of claim and which merely states "a communications module for communication the specific rate sheet to a remote system…", Applicant urges the plain meaning is that the remote system is remote from the system executing the computer program logic.

4.5 Addressing Section 9 (10) of Examiner's Answer

With regard to claims 55-58, the Examiner's reasons merely refer to "*Danford-Klein*, Table 1, Columns 17-19." The specification indicates that "Table 1 lists a series of services that can be handled by an embodiment of a computerized rating system constructed in accordance with the invention."

Claim 55 recites "a tariffs module for calculating a tariff charge, the freight charge comprising the traffic charge." The Examiner elaborates that because a customs fee is listed, which is viewed to be a tariff, that the claim limitation is obvious. Applicant notes that the table does not recite any module function or structure, but merely indicates services can be provided, and without stating how.

Claim 56 recites "a compliance module for determining whether a proposed shipment of goods to a destination country complies with import regulations of the destination country." The Examiner elaborates in section 10 that "the table also discloses fees for commodity check and for

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surveillance…." Applicant submits that the phrase "commodity check" is ambiguous as to what it encompasses, and does not by itself indicate the limitation associated with the recited compliance module. If anything, the table suggests that various line item charges can be added for additional services performed in association with a shipment, which could reflect charges associated with a manual operation performed by a user, as opposed to processing by the shipping system. In other words, a *person* could manually determine whether a proposed shipment complies with import regulations, and add a line item representing a fee for the manual service. The reference does not teach or suggest that the *processing system* would determine whether the shipment complied with the import regulations.

Claim 57 recites "a logging module wherein the freight charge is stored in a file." The Examiner elaborates in Section 10 that a table of services discloses "logging."   Applicant submits that if anything, the table suggests that various line item charges can be added for additional services performed in association with a shipment. The claim recites storing "the freight charge", which refers to the freight charge of claim 46. In contrast, *Danford-Klein* indicates that table 1 reflects additional services in "addition to the charges for basic linehaul service." (Col. 17, line 32.)   Consequently, *Danford-Klein* distinguishes between basic freight charges and additional services, and Table 1 does not refer to the basic linehaul (e.g., rating) services. Thus, Table 1 does not list the "freight charge" calculated by the system of *Danford-Klein*, but only lists additional services offered to the freight charge.

Claim 58 recites "wherein the freight charge is determined based in part on a package weight calculation provided by the packing module." The Examiner elaborates in section 10 that this limitation is disclosed by "palleting and handling charges." Applicant notes that Table 1 discloses "Pallet Exchange" in column 18, but does not find any service indicated specifically as "palleting." Applicant submits that "Pallet Exchange" does not disclose the recited limitation, but pertains to a service of replacing a pallet, or something similar.

4.6 Addressing Section 9(13) of Examiner's Answer

Claim 79 recites in part "the communication module further adapted for receiving an indication from the remote system identifying the template to interpret the specific rate sheet."

The Examiner indicates that "it would have been obvious to one having ordinary skill in the art at the time of the invention was made to have [the] template storage module be remote from the rate sheet analyzer module, since it has been held that the location of parts, whether it be local or remote, involves only routing skill in the art."

Applicant notes that this does not address the limitation of "receiving an indication from the remote system identifying the template to interpret the specific rate sheet." Rather, the Examiner Answer only addresses the first limitation, "a communications mode for communication the rate sheet to a remote system for analysis."

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CONCLUSION

For all of the foregoing reasons, Appellant hereby requests reversal of the rejection of Claims 46-83 under 35 U.S.C. 103(a) with instructions on remand to promptly issue a Notice of Allowance for all pending Claims.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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Claims Appendix

1- 45 (cancelled)

46.   A system for processing data associated with a freight shipment, comprising:

a rate sheet input module capable of accepting a plurality of rate sheets wherein each rate sheet specifies published freight rates and each rate sheet is associated with one of a plurality of freight carriers and is respectively structured according to one of a plurality of formats, the rate sheet input module further receiving and storing a rate sheet associated with the one of a plurality of freight carriers and structured according to one of the plurality of formats;

a rate sheet analyzer module adapted to interface with a template storage module ~~for~~ storing a plurality of templates, wherein one of the plurality of templates is associated with a specific freight carrier and is structured according to said one of the plurality of formats to interpret the rate sheet, the rate sheet analyzer module selecting the one of the plurality of templates by matching the one of the plurality of freight carriers associated with the rate sheet with the specific freight carrier associated with the one of the plurality of templates; and

a rule generation module determining a freight charge associated with the freight carrier using the selected one of the plurality of templates and the rate sheet.

47.   The system of claim 46 wherein the rate sheet is in a spreadsheet format.

48.   The system of claim 46 wherein the rate sheet specifies zone-based rates.

49.   The system of claim 46 wherein the system further comprises a user-interface module adapted to receive input from a user indicating the specific freight carrier associated with the rate sheet.

50.   The system of claim 47 where the rate sheet analyzer module selects the template to interpret the rate sheet based on a keyword in the rate sheet.

51.   The system of claim 50 where the keyword identifies the freight carrier.

52.   The system of claim 50 where the selection of the template to interpret the rate sheet based on the keyword in the rate sheet is based on the location of the keyword in the rate sheet.

53.   The system of claim 46 wherein the template storage module is in a remote location with respect to the rate sheet analyzer module.

54.   The system of claim 53 further comprising:

a communications module for communicating the rate sheet to the remote location, the communication module receiving the template adapted to interpret the received rate sheet, the communications module providing the template to the template storage module.

55.   The system of claim 50 further comprising a tariffs module for calculating a tariff charge, the freight charge comprising the tariff charge.

56.   The system of claim 55 further comprising a compliance module for determining whether a proposed shipment of goods to a destination country complies with import regulations of the destination country.

57.   The system of claim 46 further comprising a logging module wherein the freight charge is stored in a file.

58.   The system of claim 46 further comprising a packaging module wherein the freight charge is determined based in part on a package weight calculation provided by the packaging module.

59.   The system of claim 46 further comprising:

an accessorial charge module for accepting data representative of accessorial charges associated with the freight rates and determining an accessorial charge wherein the freight charge comprises the accessorial charge.

60.   A method of determining a charge associated with a freight shipment comprising:

receiving freight data associated with freight to be shipped;

receiving data representative of a rate sheet, the rate sheet specifying published freight rates associated with a freight carrier;

storing the rate sheet;

selecting a template from a template storage module by matching a first freight carrier associated with the template with a freight carrier indicated in the rate sheet;

retrieving the template from a template storage module to interpret the rate sheet, the template storage module storing a plurality of templates wherein each template is adapted to respectively interpret a particular rate sheet; and

generating a freight charge using the selected template to interpret the rate sheet in conjunction with the freight data.

61.   The method of claim 60 wherein the rate sheet is in a spreadsheet format.

62.   The method of claim 60 wherein the rate sheet specifies zone-based rates.

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63.   The method of claim 60 further comprising:

        receiving input from a user providing identifying information associated with the rate
sheet.

64.   The method of claim 63 wherein the rate sheet identifying information associated with
the rate sheet identifies the freight carrier associated with the rate sheet.

65.   The method of claim 61 wherein retrieving a template from the template storage module
to interpret the rate sheet is based on a keyword in the rate sheet.

66.   The method of claim 65 wherein the keyword identifies the freight carrier.

67.   The method of claim 65 wherein retrieving a template from the template storage module
to interpret the rate sheet is based on the location of the keyword in the rate sheet.

68.   The method of claim 60 wherein the template storage module is in a remote location with
respect to the rate sheet analyzer module.

69.   The method of claim 68 further comprising the step of:

        transmitting the rate sheet module to the remote location; and

        receiving an identifier associated with the rate sheet used by the rate sheet analyzer
module to select the template.

70.   The method of claim 60 further comprising:

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receiving a second template for interpreting a second rate sheet; and

storing the second template in the template storage module.

71.   The method of claim 60 further comprising:

accepting data representative of accessorial charges associated with the freight rates; and

generating the freight charge comprising an accessorial charge.

72.   A computer-readable medium product having computer program logic embodied therein for determining a freight charge, the computer program logic comprising:

a rate sheet input module capable of accepting a plurality of rate sheets associated with a plurality of carriers wherein each rate sheet specifies published freight rates and each rate sheet is respectively structured according to one of a plurality of formats, the rate sheet input module further receiving a specific rate sheet associated with a freight carrier and structured according to one of the plurality of formats;

a rate sheet analyzer module adapted to interface with a template storage module for storing a plurality of templates wherein one of the plurality of templates is adapted to interpret the specific rate sheet, the rate sheet analyzer module selecting the one of the plurality of templates to interpret the specific rate sheet by matching a first freight carrier associated with the one of the plurality of templates with the freight carrier associated with the specific rate sheet; and

a rule generation module calculating the freight charge associated with the freight carrier using the selected one of the plurality of templates and the specific rate sheet.

73.   The computer-readable medium product of claim 72 wherein the specific rate sheet is in a spreadsheet format.

74.   The computer-readable medium product of claim 72 wherein the specific rate sheet specifying zone-based rates.

75.   The computer-readable medium product of claim 72 wherein the system further comprises a user-interface module adapted to receive input from a user to specify information about the specific rate sheet.

76.   The computer-readable medium product of claim 73 where the rate sheet analyzer module selects the template to interpret the specific rate sheet based on a keyword in the rate sheet.

77.   The computer-readable medium product of claim 76 where the keyword identifies the freight carrier.

78.   The computer-readable medium product of claim 73 where the selection of the template to interpret the specific rate sheet based on the keyword in the rate sheet is based on the location of the keyword in the rate sheet.

79.   The computer-readable medium product module of claim 72 further comprising:

        a communications module for communicating the rate sheet to a remote system for analysis, the communication module further adapted for receiving an indication from the remote system identifying the template to interpret the specific rate sheet.

80.   The computer-readable medium product of claim 72 further comprising:

        a communications module for communicating the specific rate sheet to a remote system

for analysis, the communication module further adapted for receiving the template from the remote system, the communications module providing the template to the template storage module.

81.   The computer-readable medium product of claim 72 further comprising:

        a communications module adapted for receiving and storing templates in the template storage module.

82.   The computer-readable medium product of claim 72 further comprising:

        an accessorial charge module accepting data representative of accessorial charges associated with the freight rates for generating an accessorial charge.

83.   The computer-readable medium product of claim 82 wherein the rule generation module calculates the freight charge comprising the accessorial charge.